IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.830 OF 2006
IN
SUIT NO. 680 OF 2006

Girish Dayalal Khatri ...Plaintiff
Vs.
Shantaben Dayalal Khatri & Ors. ...Defendants

Mr.Bharat Joshi for Plaintiff
Mr. K.R. Parekh for Defendant Nos. 1 to 4
Plaintiff present

CORAM: SMT. ROSHAN DALVI, J.
DATED: 6TH MARCH, 2007

P.C.

1. The Plaintiff has filed this Administration Suit seeking administration of the estate of his deceased father. The Defendants are his mother, brother, two sisters and a firm in which the wife of Defendant No.2 has been made partner after the death of the deceased.

2. The Plaintiff has shown, what he considers, the estate of the deceased father as Exhibit-8 to the Plaint. The Plaintiff seeks his 1/5 th share therein.

Each of the items of the estate require to be considered :

(i). Flat No.12 : This flat stood in the name of the deceased which has been transferred in the name of the Defendant No.2 as per the WILL of the deceased, yet unprobated. The Defendants would be required to probate the WILL. The Defendants cannot transfer the suit flat to any third party.

Flat N.13: This flat has been gifted by the Plaintiff to his mother during the life time of his father, that was at the time a certain settlement was arrived at between the father and two brothers relating to their business. Though the Plaintiff claimed flat no.13, the Plaintiff's Advocate, in all fairness, upon being shown the Deed of Gift, states to Court on the instructions of the Plaintiff that the Plaintiff does not claim the said flat.

(ii). The shop at Girgaon : The Defendants have shown that as a tenanted premises of Defendant No.2 and hence, not a part of the estate of the deceased.

(iii). Office cabin at Fort, Mumbai: A deed of dissolution executed between the Plaintiff and Defendant No.2 dated 1st April, 1998 in respect of their business M/s.Banco Engineering Company shows the said premises having come to the share of Defendant No.2.

Hence, it is not a part of the estate of the deceased.

(iv). A land with house No.335A at Kabirpura, Khatriwadi, Bharuch, Gujarat: The Defendants have shown a letter of their Advocate addressed to the ITO dated 19th August, 1988 on behalf of the Defendant No.1 showing the purchase of this property. The Defendants have produced electricity bills of the year 1987 showing the said house in the name of Defendant No.1. Primafacie, therefore, the property stands in the name of Defendant No.1. Hence, that is not the part of the estate of the deceased.

(v). Shop at Sardar Market at Bharuch, Gujarat: The Defendants have produced correspondence with the

Deputy Director, Income Tax showing an enquiry regarding the investment made by the Income Tax Department on 28th July, 1988 addressed to Defendant No.1 for the said shop, and reply dated 19th August, 1988 of the Advocate of Defendant No.1 to the ITO with regard to the said shop shown standing in the name of the Defendant No.1 since 1988. Hence this shop is not the estate of the deceased.

(vi). 3 Shops at Bhavesh Shopping Center, Ankleshwar, Gujarat: The Defendants have shown registered agreements of purchase by Defendants 2,3 & 4 in respect of one shop each.

It is the case of the Defendants that the Plaintiff has the similar shop in Ankleshwar, Gujarat, which fact has been suppressed. These shops do not form part of the estate of the deceased.

(vii). & (**VIII**) : Capital in partnership firm of M/s.Vijay Engineering Works: The capital amount shown by the Plaintiff is Rs.1,14,000/- in the said firm. The Plaintiff claims 1/5th share therein. That part of the capital is required to be protected pending the suit.

The Plaintiff also claims a share in the 1/4th share of the deceased in the industrial shed where the partnership business is being carried out. The Defendants have transferred the said shop to the wife of Defendant No.2 as per the WILL, yet not probated. That share is required to be protected pending the suit as it forms the part of the estate of the deceased.

(IX to XI) FDRs, Bank Accounts, Locker: The Defendants claim that there are no such fixed deposits, savings account or bank lockers, except for Rs.5000/- in one savings account. That amount would have to be protected pending the Suit. Any fixed deposits or savings bank accounts standing in the name of the deceased cannot be operated by the Defendants unless the WILL of the deceased is probated.

(XII) Shares and Stocks : The Defendants claim that the shares mentioned by the Plaintiffs stood in the joint names of the deceased with another holder and have been transferred to the 2nd holder after the death of the deceased, though the WILL is yet not probated. Those shares also cannot be further

transferred unless the WILL is probated. Similarly 25 shares of Phizer Ltd stood in the sole name of the deceased and hence, cannot be transferred until the WILL is probated.

(XIII) Loans and Advances :The Defendants have denied all the recoveries and loans of the parties mentioned in Exhibit-A, except the loan to one Subro Industries, which is stated to have been returned. If there are outstanding recoveries or loan and advances yet unpaid though payable by third parties to the deceased, the Defendants would have to protect 1/5 th share of the Plantiff therein pending the grant of the probate and pending the Suit.

(XIV) National Savings Certificate : The Defendants claim that there is no such NSC, but if any NSC is found in the name of the deceased the Plaintiffs 1/5 th share would have to be protected pending the probate and pending this Suit.

3. It is the case of the Defendants that the Plaintiff separated from the family upon certain disputes during the life time of the father. There were two family businesses. The Plaintiff was given one business which he continues. The Defendant

No.2 continued the other business. Consequently the parties entered into the Deed of Dissolution dated 1st April, 1998 with regard to the business of M/s. Banco Engineering Company. The Defendants have not claimed any share in the business which came to the Plaintiffs' share being M/s. Banco Engineering Company. The Defendants have produced one Bank statement of Saraswat Co-operative Bank Ltd of Banco Engineering Company, which came to the share of Defendant No.2 showing Rs.2 Lakhs paid to the Plaintiff on 21st January, 1995 for the purchase of a flat in which also the Defendants do not claim any share.

4. It is the case of the Defendants that pursuant to the separation in the family of the deceased the Plaintiff gave up his right, title and interest in the other properties of the deceased and was allowed to continue one business. The Defendants accordingly deny the Plaintiffs' right to any reliefs in the other properties of the deceased. The Defendants have specifically stated in para 16 of their affidavit in reply that the Plaintiff accepted the WILL of the deceased and hence, the probate has not been applied for and obtained, but the estate of the deceased has been administered. The Plaintiff has not challenged that material statement of fact of his acceptance of the WILL in his affidavit in rejoinder. Primafacie no case for injunction or for

appointment of Court Receiver is not made out. However, in view of the Plaintiff's challenge to the WILL by way of this Suit, the Defendants would be required to obtain a Probate. Hence order :

(1). Pending the grant of Probate the Defendants shall not create any third party rights or otherwise transfer the immovable properties being Flat No.12 in Himalaya Co-operative Housing Society at Andheri (E), Mumbai, the right of Defendant No.2 in the industrial share at Udyog Industrial Estate, Andheri (E), Mumbai and the shares of the Company Item No.12 of Exhibit-8.

(2). The Defendants shall obtain Probate of any other movable property found in the name of deceased being shares, bank fixed deposits, Savings Bank Accounts or any Bank Lockers.

(3). The Defendants shall deposit in Court a sum of Rs.22,800/- being the Plaintiff's share in the capital of the Partnership Firm of M/s. Vijay Engineering Works and a sum of Rs.1000/- being the Plaintiff's share in the Bank Account shown standing in the name of the deceased.

(4). There shall be no order on Notice of Motion. No order as to costs. Notice of Motion disposed of accordingly.

(5). The dispute is between family members. It will be worthwhile for parties to put an end to the dispute by adopting any alternative resolution preferably by mediation.

(SMT.ROSHAN DALVI, J.)